IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 733 OF 2004.

Laxmichand Morarji Shah. ... Appellant.

V/s.

1. Khushroo Ardeshir Khobyar.

2. Mehnaz Cyrus Irani. ... Respondents.

Prakash Naidu for the appellant.

R.A.Thorat for the respondents.

CORAM : V.C.DAGA, J.

DATED : 19th August 2004.

P.C. :

. Heard.

. Admit.

. Heard finally by consent of parties.

2. This appeal is directed against the order dated 23rd July, 2004 passed by the City Civil Court at Bombay in Draft Notice of Motion taken out by the plaintiff in S.C.Suit No.3361 of 2004.

Facts :
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3. The appellant is original defendant No.1. The respondent No.1 is original plaintiff, whereas respondent No.2 is original defendant No.2.

The factual matrix of the case reveals that on 1st July, 1991 a partnership was entered into between the appellant, respondent No.1 and one Mr.Cyrus Khodadad Irani to conduct eating house business from shop Nos.1, 154, 158 located at Bohari Building, Alibhgai Premji Lane, Mumbai- 400 007. The said partnership was at will. However, no partnership as set out in the deed of partnership was acted upon.

4. On 19th May, 1999, another partnership was formed by the the appellant and respondent No.1 to carry out business as per partnership deed dated 1st July, 1991 in the name and style, "M/s.Sheetal Bar and Restaurant, Mumbai". However, no business was carried on even after formation of the said partnership though on 8th December, 1999, F.L.Licence No.592 was obtained in the name of appellant and respondent No.1.

5. On 21st December, 1999, fresh partnership came to be formed by the appellant and respondents herein. This partnership is also at will. It appears that due to some disputes or misunderstanding between the parties respondent No.1 on 29th March, 2004 gave notice through advocate for dissolution of partnership firm and also informed the Sales Tax Department by letter dated 31st March,

2004 to discontinue registration issued under the provisions of the Sales Tax legislations. Similar intimation was also given to other authorities so as to cancel registration obtained under various other legislations. In addition to this, respondent No.2 also issued notice of dissolution of partnership on 26th March, 2004.

6. On 7th July, 2004, respondent No.1 filed S.C.Suit No.3361 of 2004 for dissolution of partnership formed on 21st December, 1999 and also prayed for settlement of account and appointment of Receiver on the property of the firm.

7. In the above suit, notice of motion was taken out for appointment of Court Receiver with further prayer to appoint respondent No.1 as agent of the Court Receiver.

8. On being noticed, defendants appeared and filed their reply. It appears from the impugned order that learned counsel appearing before trial Court for defendant No.1/ appellant herein; informed the trial Court that his client has no objection for dissolution of the partnership. It further appears that on the basis of the said no-objection, the trial Court was pleased to appoint

Court Receiver in respect of the suit premises in terms of prayer clause (a) of the notice of motion and directed Court Receiver to invite bids so as to appoint highest bidder as agent of the Court Receiver. Until appointment of highest bidder, appellant/ defendant No.1 is permitted to carry on business as proprietor without prejudice to the rights of the parties to the suit.

9. The above order is subject matter of challenge in the present appeal from order at the instance of defendant No.1.

10. From the factual matrix it is clear that the notice of dissolution has been issued by respondent Nos.1 and 2. Majority of the partners rather all desired dissolution of partnership. The appellant/ original defendant No.1 has also conveyed his no-objection to the trial Court for dissolution of the partnership firm as mentioned in the impugned order. It is, thus, clear that all parties to the suit are desirous of getting the partnership firm dissolved.

11. In the above view of the matter, as per section 43 of the Partnership Act, the dissolution of partnership should be either from the date

mentioned in the notice or, if no such date is mentioned, from the date of receipt of notice intimating intention to dissolve. Once the partnership is dissolved it is not open for the partners to carry on business except for the purposes of winding-up unless contrary intention appears.

12. In the instant case, suit has been filed seeking decree of dissolution of partnership between original plaintiff and defendant Nos.1 and 2 with further prayer to settle and finalise the accounts of the partnership firm. Thus, considering the nature of the suit and the prayers made therein with respect to the dissolution of partnership and settlement of accounts, nobody is seeking right to run business. It is, thus, not open for any of the partners to claim right to run business. If the final relief is for dissolution of partnership firm and settlement of accounts, no interim relief as prayed could have been granted by the trial Court. The interim relief can only be granted in the aid of final relief.

13. While considering grant of interim relief, one basic principle to be borne in mind is that the interlocutory orders are made in the aid of

final order so that while granting final relief the Court can mould the relief and that it should not be faced with situation that the final relief becomes infructuous. No interlocutory order would survive after the original proceeding comes to an end. The interim order is granted to a person on the footing that person is prima facie entitled to the right, on which the claim for the main relief as well as the interim relief are based. That relief is granted as an interim measure till the disposal of the suit, in which is to be investigated the validity of the claim of right that has been put forward. If no such claim has been put forward in the suit, it means that there can be no occasion for investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of the suit, in the course of which the interim relief was sought and obtained.

14. The Apex Court in the case of **Cotton Corpn. of India v. United Industrial Bank**, AIR 1983 SC 1272 has held :

> " ..... It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In State of Orissa v. Madan Gopal Rungta 1952 SCR 28 : (AIR 1952 SC 12) a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted....."

The above principle will hold good even for the interim order under order 40 rule 1 of C.P.C.

15. In the present case, since the no claim to run business has been put forward by the plaintiff or defendants in the suit, there would be no occasion for investigation of such claim in the suit as such there can be no justification for grant of interim relief as is granted by the trial Court

in this case. In this view of the settled principles of law, the impugned order cannot stand to the scrutiny of law. The same is liable to be quashed and set aside. It is made clear that no partner shall have right to run business until the partnership firm is dissolved and the accounts are settled in accordance with law.

16. In the result, impugned order is quashed and set aside to the extent it directs appointment of highest bidder or any other person as agent of the Court Receiver. The Court Receiver shall simply hold possession of the property for and on behalf of all the partners of the partnership firm at their cost during pendency of the suit. The trial Court is directed to try and dispose of the suit as expeditiously as possible. It would also be open for the trial Court to consider the impact of section 89 of C.P.C. consisting existence of arbitration clause in the deed of partnership. If all parties agree, the Court can pass decree for dissolution of partnership and direct settlement of accounts in accordance with law.

. With the above observations, appeal is partly allowed with no order as to costs.

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